THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20148 OF 1997

ORAL ORDER:

The petitioner, who claims to be a landless poor, had occupied Ac.5.05 cents of vacant land situated in S.No.159/2 of Brahmasamudram village. It is stated that having reclaimed the same, he has been raising crops, which is the only source of his livelihood. Since he has been in possession of the said land for more than 15 years, he made a representation requesting to assign the said land.

While so, it appears that the 4th respondent-Mandal Revenue Officer, submitted a report dated 30.10.1990 stating that the land in Sy.No.159/2, to an extent of Ac.5.05 cents, was originally assigned to one Ujjappa and after his death, the said land was transferred in favour of his sons by name Nanjappa and Muthappa by proceedings dated 1.4.1995. Subsequently, Nanjappa died and his wife Akkamma (5th respondent herein) allowed the writ petitioner to cultivate the land. However, the writ petitioner did not allow Akkamma to enter into the land and filed O.S.No.147 of 1990 on the file of the court of District Munsif, Penukonda and obtained an order of temporary injunction, misrepresenting that he is the pattedar.

On the basis of the said report submitted by the Mandal Revenue Officer, the Revenue Divisional Officer, Penukonda issued notices to the writ petitioner as well as Smt. Akkamma, calling upon them to file documentary evidence in support of their respective claims. After conducting due enquiry, the 3rd respondent-Revenue Divisional Officer, passed an order dated 25.2.1992 holding that the petitioner was not a landless poor and, therefore, not entitled for grant of assignment. It was also held that after the death of original Pattadar, Ujjappa as well as his son Nanjappa, Smt. Akkamma, who is the legal heir of the original pattadar, is entitled to enjoy the patta land. Accordingly, the 4th respondent was directed to take up

the issue under Act 9 of 1977 and to restore the land in Sy.No.159/2 to the 5th respondent after evicting the unauthorized occupant.

Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent-Joint Collector. The said appeal was dismissed directing the concerned Mandal Revenue Officer to restore the land to the legal heir of the original assignee. Questioning the same, the petitioner preferred a Revision Petition before the 1st respondent-Special Commissioner of Land Revenue, Andhra Pradesh, Hyderabad. The 1st respondent, while confirming the findings recorded by the respondents 2 and 3, dismissed the Revision Petition by order dated 12.11.1996. Hence, this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner while pointing out that the impugned proceedings under Act 9 of 1977 were initiated on the basis of the report of the 4th respondent-Mandal Revenue Officer, dated 25.9.1991, in which a finding was recorded that the petitioner was not a landless poor person, contended that since the said enquiry was conducted without notice to the petitioner, the finding, if any, recorded is not binding on the petitioner and the entire proceedings are liable to be set aside on that ground alone.

It is to be noted under sub-section (1) of Section 3 of the Andhra Pradesh Assigned Land (Prohibition of Transfer) Act, 1977 (for short, "Act 9 of 1977") any land which has been assigned by the Government to a landless poor person shall not be transferred and no right or title in such assigned land shall vest in any person acquiring land by such transfer. Section 4 of the Act further declared that if the District Collector or any other Officer not below the rank of Tahsildar, authorized by him is satisfied that the provisions of Section 3(1) have been contravened in respect of any assigned land, he may take possession of the assigned land after evicting the person in

possession in the manner prescribed.

In the case on hand, proceedings were initiated against the petitioner on the allegation that the petitioner had illegally occupied the assigned land defeating the rights of the 5th respondent, who is the legal heir of the original assignee. After conducting due enquiry, the respondents 1 to 3 concurrently found that late Ujappa was the original assignee and that the writ petitioner was in unauthorized occupation of the said land. Such a concurrent finding of fact recorded by respondents 1 to 3 warrants no interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

So far as the contention of the petitioner, that the finding recorded by the Mandal Revenue Officer that he was not a landless poor is incorrect and not biding on him is concerned, it is relevant to note that for the purpose of resumption of assigned land under Section 4 of Act 9 of 1977, the fact whether the person in occupation is a landless poor or not is immaterial.

Even assuming that the finding recorded by the Mandal Revenue Officer that the petitioner is a landless poor person is incorrect and without any basis, the question of assigning the said land to the petitioner arises only where the legal heir of the original assignee is not traceable. Since the 5th respondent, who is the legal heir of the original assignee is very much available it cannot be held that the orders passed by the respondents 1 to 3 suffer from any infirmity.

Accordingly, the writ petition, which is devoid of any merit, is hereby dismissed. No costs.

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(G. ROHINI).

14th February, 2007.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20148 OF 2006

14th February, 2007.

Between:

K. Ramakrishna alias Ramakristappa. .. Petitioner.

And

The Special Commissioner of Land Revenue,
Andhra Pradesh, Hyderabad and others. ..
Respondents.